

TITLE V—CONSTRUCTION- DIFFERENTIAL SUBSIDY⁷

SEC. 501. SUBSIDY AUTHORIZED FOR VESSELS TO BE OPERATED IN FOREIGN TRADE (46 App. U.S.C. 1151 (1999)).

(a) **Application for Subsidy for Construction; Conditions Precedent to Granting.** Any proposed ship purchaser who is a citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in the construction of a new vessel to be used in the foreign commerce of the United States. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the plans and specifications call for a new vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for national defense or military purposes in time of war or national emergency; (2) if the applicant is the proposed ship purchaser, the applicant possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the proposed new vessel, and (3) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price shall not restrict the lawful or proper use or operation of the vessel except to the extent expressly required by law. The Secretary of Transportation may give preferred consideration to applications that will tend to reduce construction-differential subsidies and that propose the construction of ships of high transport capability and productivity.

(b) **Submission of Plans to Navy Department; Certification of Approval.** The Secretary of Transportation shall submit the plans and specifications for the proposed vessel to the Navy Department for examination thereof and suggestions for such changes therein as may be deemed necessary or proper in order that such vessel shall be suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans and specifications as submitted, or as modified, in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

(c) **Application for Subsidy for Reconstruction or Reconditioning; Conditions Precedent to Granting; Contracts.** Any citizen of the

⁷ Throughout Title V, the statutory life of vessels is generally provided as 25 years. But see footnote 4, page 22, *supra*.

United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction- differential subsidy to aid in reconstructing or reconditioning any vessel that is to be used in the foreign commerce of the United States. If the Secretary of Transportation, in the exercise of his discretion, shall determine that the granting of the financial aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act, the Secretary of Transportation may approve such application and enter into a contract or contracts with the applicant therefor providing for the payment by the United States of a construction-differential subsidy that is to be ascertained, determined, controlled, granted, and paid, subject to all the applicable conditions and limitations of this title and under such further conditions and limitations as may be prescribed in the rules and regulations the Secretary of Transportation has adopted as provided in section 204(b) of this Act; but the financial aid authorized by this subsection shall be extended to reconstruction or reconditioning only in exceptional cases and after a thorough study and a formal determination by the Secretary of Transportation that the proposed reconstruction or reconditioning is consistent with the purposes and policy of this Act.

SEC. 502. CONSTRUCTION OF VESSELS; BIDS; SUBSIDIES
(46 App. U.S.C. 1152 (1999)).

(a) Approval of Bids; Contract with Bidder; Acceptance of Negotiated Price; Shipyard Records, Availability; Contract with Applicant or Qualified Citizen for Purchase of Vessel. If the Secretary of the Navy certifies his approval under section 501(b) of this Act, and the Secretary of Transportation approves the application, he may secure bids for the construction of the proposed vessel according to the approved plans and specifications. If the bid of the shipbuilder who is the lowest responsible bidder is determined by the Secretary of Transportation to be fair and reasonable, the Secretary of Transportation may approve such bid, and if such approved bid is accepted by the proposed ship purchaser, the Secretary of Transportation is authorized to enter into a contract with the successful bidder for the construction, outfitting, and equipment of the proposed vessel, and for the payment by the Secretary of Transportation to the shipbuilder, on terms to be agreed upon in the contract, of the contract price of the vessel, out of the construction fund hereinbefore referred to, or out of other available funds. Notwithstanding the provisions of the first sentence of section 505 of this Act with respect to competitive bidding, the Secretary of Transportation is authorized to accept a price for the construction of the ship which has been negotiated between a shipyard and a proposed ship purchaser if (1) the proposed ship purchaser and the shipyard submit backup cost details and evidence that the negotiated price is fair and reasonable; (2) the Secretary of Transportation finds that the negotiated

price is fair and reasonable; and (3) the shipyard agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment have access to and the right to examine any pertinent books, documents, papers, and records of the shipyard or any of its subcontractors related to the negotiation or performance of any contract or subcontract negotiated under this subsection and will include in its subcontracts a provision to that effect. Concurrently with entering into such contract with the shipbuilder, the Secretary of Transportation is authorized to enter into a contract for the sale of such vessel upon its completion, to the applicant if he is the proposed ship purchaser and if not to another citizen of the United States, if the Secretary of Transportation determines that such citizen possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the vessel, at a price corresponding to the estimated cost, as determined by the Secretary of Transportation pursuant to the provisions of this Act, of building such vessel in a foreign shipyard.

· (b) **Basis for Fixing Subsidy; Cost of Construction in Foreign Yards; Annual Recomputation and Publication of Foreign Cost; Limitation on Construction Differential; Report on American Shipbuilding Industry.** The amount of the reduction in selling price which is herein termed "construction differential subsidy" shall equal, but not exceed, the excess of the bid of the shipbuilder constructing the proposed vessel (excluding the cost of any features incorporated in the vessel for national defense uses, which shall be paid by the Secretary in addition to the subsidy), over the fair and reasonable estimate of cost, as determined by the Secretary, of the construction of the type vessel if it were constructed under similar plans and specifications (excluding national defense features as above provided) in a foreign shipbuilding center which is deemed by the Secretary to furnish a fair and representative example for the determination of the estimated foreign cost of construction of vessels of the type proposed to be constructed. The Secretary of Transportation shall recompute such estimated foreign cost annually unless, in the opinion of the Secretary, there has been a significant change in shipbuilding market conditions. The Secretary shall publish notice of his intention to compute or recompute such estimated foreign cost and shall give interested persons, including but not limited to shipyards and shipowners and associations thereof, an opportunity to file written statements. The Secretary's consideration shall include, but not be limited to, all relevant matter so filed, and his determination shall include or be accompanied by a concise explanation of the basis of his determination. The construction differential approved and paid by the Secretary shall not exceed 50 per centum of the cost of constructing, reconstructing, or reconditioning the vessel (excluding the cost of

national defense features). If the Secretary finds that the construction differential exceeds, in any case, the foregoing percentage of such cost, the Secretary may negotiate with any bidder (whether or not such person is the lowest bidder) and may contract with such bidder (notwithstanding the first sentence of section 505) for the construction, reconstruction, or reconditioning of the vessel involved in a domestic shipyard at a cost which will reduce the construction differential to such percentage or less. In the event that the Secretary has reason to believe that the bidding in any instance is collusive, he shall report all of the evidence on which he acted (1) to the Attorney General of the United States, and (2) to the President of the Senate and to the Speaker of the House of Representatives if the Congress shall be in session or if the Congress shall not be in session, then to the Secretary of the Senate and Clerk of the House, respectively.

(c) **Terms of Sale of Vessel to Purchaser.** In such contract of sale between the purchaser and the Secretary of Transportation, the purchaser shall be required to make cash payments to the Secretary of Transportation of not less than 25 per centum of the price at which the vessel is sold to the purchaser. The cash payments shall be made at the time and in the same proportion as provided for the payments on account of the construction cost in the contract between the shipbuilder and the Secretary of Transportation. The purchaser shall pay, not less frequently than annually, interest on those portions of the Secretary of Transportation's payments as made to the shipbuilder which are chargeable to the purchaser's portion of the price of the vessel (after deduction of the purchaser's cash payments) at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs. The balance of such purchase price shall be paid by the purchaser, within twenty-five years after delivery of the vessel and in not to exceed twenty-five equal annual installments, the first of which shall be payable one year after the delivery of the vessel by the Secretary of Transportation to the purchaser. Interest at the rate per annum applicable to payments that are chargeable to the purchaser's portion of the price of the vessel shall be paid on all such installments of the purchase price remaining unpaid.

(e) **Construction in Navy Yards; Sales to Citizens; Terms.** If no bids are received for the construction, outfitting, or equipping of such vessel, or if it appears to the Secretary of Transportation that the bids received from privately owned shipyards of the United States are collusive, excessive, or unreasonable, and if a citizen of the United States

agrees to purchase said vessel as provided in this section, then, to provide employment for citizens of the United States, the Secretary of Transportation may have such vessel constructed, outfitted, or equipped at not in excess of the actual cost thereof in a navy yard of the United States under such regulations as may be promulgated by the Secretary of the Navy and the Secretary of Transportation. In such event the Secretary of Transportation is authorized to pay for any such vessel so constructed from his construction fund. The Secretary of Transportation is authorized to sell any vessel so constructed, outfitted, or equipped in a navy yard to a citizen of the United States for the fair and reasonable value thereof, but at not less than the cost thereof less the equivalent to the construction differential subsidy determined as provided by subsection (b), such sale to be in accordance with all the provisions of this title.

(f) Survey of Shipbuilding Capability; Correction of Inadequacies; Reimbursement of Certain Vessel Construction and Delivery Expenses. The Secretary of Transportation, with the advice of and in coordination with the Secretary of the Navy, shall at least once each year, as required for purposes of this Act, survey the existing privately owned shipyards capable of merchant ship construction, or review available data on such shipyards if deemed adequate, to determine whether their capabilities for merchant ship construction, including facilities and skilled personnel, provide an adequate mobilization base at strategic points for purposes of national defense and national emergency. The Secretary of Transportation, in connection with ship construction, reconstruction, reconditioning, or remodeling under titles V and VII, upon a basis of a finding that the award of the proposed construction, reconstruction, reconditioning, or remodeling work will remedy an existing or impending inadequacy in such mobilization base as to the capabilities and capacities of a shipyard or shipyards at a strategic point, and after taking into consideration the benefits accruing from standardized construction, the conditions of unemployment, and the needs and reasonable requirements of all shipyards, may allocate such construction, reconstruction, reconditioning, or remodeling to such yard or yards in such manner as he may determine to be fair, just, and reasonable to all sections of the country, subject to the provisions of this subsection. In the allocation of construction work to such yards as herein provided, the Secretary of Transportation may, after first obtaining competitive bids for such work in compliance with the provisions of this Act, negotiate with the bidders and with other shipbuilders concerning the terms and conditions of any contract for such work, and is authorized to enter into such contract at a price deemed by the Secretary of Transportation to be fair and reasonable. Any contract entered into by the Secretary of Transportation under the provisions of this subsection shall be subject to all of the terms and conditions of this Act,

excepting those pertaining to the awarding of contracts to the lowest bidder which are inconsistent with the provisions of this subsection. In the event that a contract is made providing for a price in excess of the lowest responsible bid which otherwise would be accepted, such excess shall be paid by the Secretary of Transportation as a part of the cost of national defense, and shall not be considered as a part of the construction-differential subsidy. In the event that a contract is made providing for a price lower than the lowest responsible bid which otherwise would be accepted, the construction-differential subsidy shall be computed on the contract price in lieu of such bid.

If, as a result of allocation under this subsection, the purchaser incurs expenses for inspection and supervision of the vessel during construction and for the delivery voyage of the vessel in excess of the estimated expenses for the same services that he would have incurred if the vessel had been constructed by the lowest responsible bidder the Secretary of Transportation (with respect to construction under title V, except section 509) shall reimburse the purchaser for such excess, less one-half of any gross income the purchaser receives that is allocable to the delivery voyage minus one-half of the extra expenses incurred to produce such gross income, and such reimbursement shall not be considered part of the construction-differential subsidy: Provided, That no interest shall be paid on any refund authorized under this Act. If the vessel is constructed under section 509 the Secretary of Transportation shall reduce the price of the vessel by such excess, less one-half of any gross income (minus one-half of the extra expenses incurred to produce such gross income) the purchaser receives that is allocable to the delivery voyage. In the case of a vessel that is not to receive operating-differential subsidy, the delivery voyage shall be deemed terminated at the port where the vessel begins loading. In the case of a vessel that is to receive operating-differential subsidy, the delivery voyage shall be deemed terminated when the vessel begins loading at a United States port in an essential service. In either case, however, the vessel owner shall not be compensated for excess vessel delivery costs in an amount greater than the expenses that would have been incurred in delivering the vessel from the shipyard at which it was built to the shipyard of the lowest responsible bidder. If as a result of such allocation, the expenses the purchaser incurs with respect to such services are less than the expenses he would have incurred for such services if the vessel had been constructed by the lowest responsible bidder, the purchaser shall pay to the Secretary of Transportation an amount equal to such reduction and, if the vessel was built with the aid of construction-differential subsidy, such payment shall not be considered a reduction of the construction-differential subsidy.

(g) **Sale of Vessels Acquired by Secretary.** Upon the application of any citizen of the United States to purchase any vessel acquired by the Secretary of Transportation under the provisions of section 215, the Secretary of Transportation is authorized to sell such vessel to the applicant for the fair and reasonable value thereof, but at not less than the cost thereof to the Secretary of Transportation, less depreciation at the rate of 4 per centum per annum from the date of completion, excluding the cost of national-defense features added by the Secretary of Transportation, less the equivalent of any applicable construction-differential subsidy as provided by subsection (b), such sale to be in accordance with all the provisions of this title. Such vessel shall thereupon be eligible for an operating-differential subsidy under title VI of this Act, notwithstanding the provisions of section 601(a)(1), and section 610(1), or any other provision of law.

(h) **Installation or Removal of National Defense Features; Title to Such Features.** The Secretary of Transportation is authorized to construct, purchase, lease, acquire, store, maintain, sell, or otherwise dispose of national defense features intended for installation on vessels. The Secretary of Transportation is authorized to install or remove such national defense features on any vessel (1) which is in the National Defense Reserve Fleet as defined by section 11(a) of the Merchant Ship Sales Act of 1946, (2) which is requisitioned, purchased, or chartered under section 902 of the Merchant Marine Act, 1936, (3) which serves as security for the guarantee of an obligation by the Secretary of Transportation under title XI of this Act, or (4) which is the subject of an agreement between the owner of such vessel and the Secretary of Transportation to install or remove such national defense features. Title to such national defense features which the Secretary of Transportation determines are not to be permanently incorporated in a vessel shall not be affected by such installation or removal unless otherwise transferred in accordance with the provisions of this title V.

(i) **Plans, Specifications, and Proposals for National Defense Features; Certification of Approval.** The Secretary of Transportation shall submit the plans and specifications for such national defense features and the proposals for their acquisition, storage, utilization, or disposition to the Navy Department for examination thereof and suggestion for such changes therein as may be deemed necessary or proper in order that such features shall be suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans, specifications, or proposals as submitted, or as modified in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

SEC. 503. DOCUMENTATION OF COMPLETED VESSEL UNDER LAWS OF UNITED STATES; DELIVERY TO PURCHASER, FIRST MORTGAGE TO SECURE DEFERRED PAYMENT (46 App. U.S.C. 1153 (1999)). Upon completion of the construction of any vessel in respect to which a construction-differential subsidy is to be allowed under this title and its delivery by the shipbuilder to the Secretary of Transportation, the vessel shall be documented under the laws of the United States and concurrently therewith, or as soon thereafter as practicable, the vessel shall be delivered with a bill of sale to the purchaser with warranty against liens, pursuant to the contract of sale between the purchaser and the Secretary of Transportation. The vessel shall remain documented under the laws of the United States for not less than twenty-five years, or so long as there remains due the United States any principal or interest on account of the purchase price, whichever is the longer period. At the time of delivery of the vessel the purchaser shall execute and deliver a first-preferred mortgage to the United States to secure payment of any sums due from the purchaser in respect to said vessel: Provided, That, notwithstanding any other provisions of law, the payment of any sums due in respect to a passenger vessel purchased under section 4(b) of the Merchant Ship Sales Act of 1946, reconverted or restored for normal operation in commercial services, or in respect to a passenger vessel purchased under title V of this Act, which is delivered subsequent to March 8, 1946, and which (i) is of not less than ten thousand gross tons, (ii) has a designed speed approved by the Secretary of Transportation but not less than eighteen knots, (iii) has accommodations for not less than two hundred passengers, and, (iv) is approved by the Secretary of Defense as being desirable for national defense purposes, may, with the approval of the Secretary of Transportation, be secured only by a first-preferred mortgage on said vessel. With the approval of the Secretary of Transportation such preferred mortgage may provide that the sole recourse against the purchaser of such a passenger vessel under such mortgage, and any of the notes secured thereby, shall be limited to repossession of the vessel by the United States and the assignment of insurance claims, if the purchaser shall have complied with all provisions of the mortgage other than those relating to the payment of principal and interest when due, and the obligation of the purchaser shall be satisfied and discharged by the surrender of the vessel, and all right, title, and interest therein to the United States. Such vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever, except the lien of the preferred mortgage, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the purchaser, except that any deficiencies with respect to freedom from encumbrances, condition, and class, may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the United States of claims of the purchaser under such policies of insurance. The purchaser shall also comply with all the provisions of section 9 of the Merchant Marine Act, 1920.

SEC. 504. PURCHASE OF VESSEL CONSTRUCTED IN ACCORDANCE WITH APPLICATION FOR SUBSIDY; BID OR NEGOTIATED PRICE BASIS FOR SUBSIDY AND PAYMENTS FOR COST OF NATIONAL DEFENSE FEATURES; DOCUMENTATION (46 App. U.S.C. 1154 (1999)). If a qualified purchaser under the terms of this title desires to purchase a vessel to be constructed in accordance with an application for construction-differential subsidy under this title, the Secretary of Transportation may, in lieu of contracting to pay the entire cost of the vessel under section 502, contract to pay only construction-differential subsidy and the cost of national defense features to the shipyard constructing such vessel. The construction-differential subsidy and payments for the cost of national defense features shall be based upon the lowest responsible domestic bid unless the vessel is constructed at a negotiated price as provided by section 502(a) or under a contract negotiated by the Secretary of Transportation as provided in section 502(b) in which event the construction-differential subsidy and payments for the cost of national defense features shall be based upon such negotiated price. No construction-differential subsidy, as provided in this section, shall be paid unless the said contract or contracts or other arrangements contain such provisions as are provided in this title to protect the interests of the United States as the Secretary of Transportation deems necessary. Such vessel shall be documented under the laws of the United States as provided in section 503 of this title. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel, except to the extent expressly required by law.

505. ELIGIBLE SHIPYARDS; MATERIALS; CONDITIONS OF CONTRACTS; LIMITATION TO AMERICAN SHIPYARDS; AMERICAN MATERIALS, WAIVER; ABILITY OF BIDDERS; FILING BIDS AND DATA (46 APP. U.S.C. 1155 (1999)). All construction in respect of which a construction-differential subsidy is allowed under this title shall be performed in a shipyard of the United States as the result of competitive bidding, after due advertisement, with the right reserved in the Secretary of Transportation to disapprove, any or all bids. In all such construction the shipbuilder, subcontractors, materialmen, or suppliers shall use, so far as practicable, only articles, materials, and supplies of the growth, production, or manufacture of the United States as defined in paragraph K of section 401 of the Tariff Act of 1930; Provided, however, That with respect to other than major components of the hull, superstructure, and any material used in the construction thereof, (1) if the Secretary of Transportation determines that the requirements of this sentence will unreasonably delay completion of any vessel beyond its contract delivery date, and (2) if such determination includes or is accompanied by a concise explanation of the basis

therefor, then the Secretary of Transportation may waive such requirements to the extent necessary to prevent such delay. No shipbuilder shall be deemed a responsible bidder unless he possesses the ability, experience, financial resources, equipment, and other qualifications necessary properly to perform the proposed contract. Each bid submitted to the Secretary of Transportation shall be accompanied by all detailed estimates upon which it is based. The Secretary of Transportation may require that the bids of any subcontractors, or other pertinent data, accompany such bid. All such bids and data relating thereto shall be kept on file until disposed of as provided by law. For the purposes of this Title V, the term "shipyard of the United States" means shipyards within any of the United States and the Commonwealth of Puerto Rico.

SEC. 506.⁸ OPERATION OF SUBSIDY CONSTRUCTED VESSEL LIMITED TO FOREIGN TRADE; REPAYMENTS TO SECRETARY FOR DEVIATIONS (46 App. U.S.C. 1156 (1999)).

Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the state of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Secretary may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever

⁸ Section 505 of Public Law 100-71, approved July 11, 1987 (101 STAT. 391, 471), the Supplemental Appropriations Act, 1987, imposes restrictions as follows: "SEC. 505. None of the funds appropriated or made available by this or any other Act or otherwise appropriated or made available to the Secretary of Transportation or the Maritime Administrator for purposes of administering the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 et. seq.), shall be used by the United States Department of Transportation or the United States Maritime Administration to propose, promulgate, or implement any rule or regulation, or, with regard to vessels which repaid subsidy pursuant to the rule promulgated by the Secretary May 3, 1985 and vacated by Order of the U.S. Court of Appeals for the D.C. Circuit January 16, 1987, conduct any adjudication or other regulatory proceeding, execute or perform any contract, or participate in any judicial action with respect to the repayment of construction differential subsidy for the permanent release of vessels from the restrictions in section 506 of the Merchant Marine Act, 1936, as amended: Provided, That such funds may be used to the extent such expenditure relates to a rule which conforms to statutory standards hereafter enacted by Congress."

the Secretary may determine that such transfer is necessary or appropriate to carry out the purposes of this Act. Such consent shall be conditioned upon the agreement by the owner to pay to the Secretary upon such terms and conditions as it may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Secretary as such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period.

SEC. 507. CONSTRUCTION OF NEW VESSEL TO REPLACE OBSOLETE; PURCHASE OF OLD VESSEL BY SECRETARY; BOND OF SELLER AGAINST LIENS (46 App. U.S.C. 1157 (1999)).

If a contract is made by the Secretary of Transportation under authority of this title for the construction and sale of a new vessel to replace a vessel then operated in foreign trade or domestic trade, which in the judgment of the Secretary of Transportation should be replaced because it is obsolete or inadequate for successful operation in such trade, the Secretary of Transportation is authorized, in his discretion, to buy such replaced vessel from the owner at a fair and reasonable valuation, which valuation shall not exceed the cost to the owner or any former owner plus the actual cost previously expended thereon for reconditioning and less a reasonable and proper depreciation, based upon not more than a twenty-five-year life of the vessel, and apply the purchase price agreed upon to that portion of the construction cost of such new vessel which is to be borne by the purchaser thereof: Provided, That the owner of such replaced vessel shall execute a bond, with one or more approved sureties, conditioned upon indemnifying the United States from all loss resulting from any existing lien against such vessel: And provided further, That such vessel has been documented under the laws of the United States for a period of at least ten years prior to the date of its purchase by the United States.

SEC. 508.⁹ DISPOSITION OF VESSELS TRANSFERRED TO MARITIME ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION (46 App. U.S.C. 1158 (1999)). If the Secretary of Transportation shall determine that any vessel transferred to the Maritime Administration of the Department of Transportation by section 202 of this Act, or hereafter acquired, is of insufficient value for commercial or military operation to warrant its further preservation, the Secretary of Transportation is authorized (1) to scrap said vessel, or (2) to sell such vessel for cash, after appraisalment¹⁰ and due advertisement,

⁹ Note the effect of the National Maritime Heritage Act, page 249, *infra*.

¹⁰ Section 1 of the Act of June 29, 1949 (63 STAT. 349), as amended (46 App. U.S.C. 864b) provides: "On or after June 29, 1949, no sale of a vessel by the Maritime Administration of the Department of Transportation shall be completed until its ballast and equipment shall have been inventoried and their value taken into consideration by the Maritime Administration in determining the selling price."

and upon competitive sealed bids, either to citizens of the United States or to aliens: Provided, That the purchaser thereof shall enter into an undertaking with sureties approved by the Secretary of Transportation that such vessel shall not be operated in the foreign commerce of the United States at any time within the period of ten years after the date of the sale, in competition with any other vessel owned by a citizen or citizens of the United States and registered under the laws thereof.

SEC. 509. VESSELS TO BE OPERATED IN DOMESTIC TRADE, TERMS AND CONDITIONS OF CONSTRUCTION AID AND SALE TO PURCHASER (46 App. U.S.C. 1159 (1999)). Any citizen of the United States may make application to the Secretary of Transportation for aid in the construction of a new vessel to be operated in the foreign or domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively). If such application is approved by the Secretary of Transportation, the vessel may be constructed under the terms and conditions of this title, but no construction-differential subsidy shall be allowed. The Secretary of Transportation shall pay for the cost of national-defense features incorporated in such vessels. In case the vessel is designed to be of not less than three thousand five hundred gross tons and to be capable of sustained speed of not less than ten knots, or in the case of a passenger vessel operating solely on the inland rivers and waterways which is designed to be of not less than one thousand gross tons and to be capable of sustained speed of not less than eight knots, or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons and to be capable of a sustained speed of not less than eight knots, or in the case of an oceangoing tug of more than two thousand five hundred horsepower or oceangoing barge of more than two thousand five hundred gross tons, or in the case of a vessel of more than two thousand five hundred horsepower designed to be capable of sustained speed of not less than forty knots, the purchaser shall be required to pay the Secretary of Transportation not less than 12 $\frac{1}{2}$ per centum of the cost of such vessel, and in the case of any other vessel the purchaser shall be required to pay the Secretary of Transportation not less than 25 per centum of the cost of such vessel (excluding from such cost, in either case, the cost of national defense features); and the balance of such purchase price shall be paid by the purchaser within twenty-five years in not to exceed twenty-five equal annual installments, with interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment

of the Secretary of Transportation to cover administrative costs, the balance of such purchase price being secured by a preferred mortgage on the vessel sold and otherwise secured as the Secretary of Transportation may determine: Provided, That, notwithstanding any other provision of law, the balance of the purchase price of a passenger vessel constructed under this section which is delivered subsequent to March 8, 1946, and which has the tonnage, speed, passenger accommodations, and other characteristics set forth in section 503 of this Act, may, with the approval of the Secretary of Transportation, be secured as provided in such section, and the obligation of the purchaser of such a vessel shall be satisfied and discharged as provided in such section.

SEC. 510. ACQUISITION OF OBSOLETE VESSELS (46 App. U.S.C. 1160 (1999)).

(a) **Definitions.** When used in this section—

(1) The term “obsolete vessel” means a vessel or vessels, each of which (A) is of not less than one thousand three hundred and fifty gross tons, (B) in the judgment of the Secretary of Transportation, should, by reason of age, obsolescence, or otherwise, be replaced in the public interest and (C) has been owned by a citizen or citizens of the United States for at least three years immediately prior to the date of acquisition hereunder.

(2) The term “new vessel” means a vessel or vessels, each of which (A) is constructed under the provisions of this Act, and is acquired within two years from the date of completion of such vessel, or is purchased under section 714, as amended, by the person turning in an obsolete vessel under this section, or (B) is hereafter constructed in a domestic shipyard on private account and not under the provisions of this Act, and documented under the laws of the United States.

(b) **Promotion of Construction of New Vessels; Allowance on Obsolete Vessels.** In order to promote the construction of new, safe, and efficient vessels to carry the domestic and foreign water-borne commerce of the United States, the Secretary of Transportation is authorized, subject to the provisions of this section, to acquire any obsolete vessel in exchange for an allowance of credit. The obsolete vessel shall be acquired by the Secretary of Transportation, if the owner so requests, either at the time the owner contracts for the construction or purchase of a new vessel or within five days of the actual date of delivery of the new vessel to the owner. The amount of the allowance shall be determined at the time of the acquisition of the obsolete vessel by the Secretary of Transportation. In the event the obsolete vessel is acquired by the Secretary of Transportation at the time the owner contracts for the construction or purchase of the new vessel, the allowance shall not be paid to the owner of the obsolete vessel, but shall be applied upon the purchase price of a new vessel. In the case of a new vessel con-

structed under the provisions of this Act, such allowance may, under such terms and conditions as the Secretary of Transportation may prescribe, be applied upon the cash payments required under this Act. In case the new vessel is not constructed under the provisions of this Act, the allowance shall, upon acquisition of the obsolete vessel by the Secretary of Transportation be paid, for the account of the owner, to the shipbuilder constructing such new vessel. In the event that title to the obsolete vessel is acquired by the Secretary of Transportation at the time of delivery of the new vessel, the allowance shall be deposited in the owner's capital construction fund. This subsection shall apply to obsolete vessels exchanged for new vessels hereafter contracted to be built, or eligible for such exchange but not exchanged in connection with a contract for new vessels executed prior to October 1, 1960.

(c) Utility Value of New Vessel; Gross Tonnage. The utility value of the new vessel for operation in the domestic or foreign commerce of the United States shall not be substantially less than that of the obsolete vessel. The gross tonnage of the obsolete vessel may exceed the gross tonnage of the new vessel in a ratio not in excess of three to one, if the Secretary of Transportation finds that the new vessel, although of lesser tonnage, will provide utility value equivalent to or greater than that of the obsolete vessel.

(d) Amount of Allowance on Obsolete Vessel; Determination of Amount. The allowance for an obsolete vessel shall be the fair and reasonable value of such vessel as determined by the Secretary of Transportation. In making such determination the Secretary of Transportation shall consider: (1) the scrap value of the obsolete vessel both in American and foreign markets, (2) the depreciated value based on a twenty or twenty-five year life, whichever is applicable to the obsolete vessel, and (3) the market value thereof for operation in the world trade or in the foreign or domestic trade of the United States. In the event the obsolete vessel is acquired by the Secretary of Transportation at the time the owner contracts for the construction of the new vessel, and the owner uses such vessel during the period of construction of the new vessel, the allowance shall be reduced by an amount representing the fair value of such use. The rate for the use of the obsolete vessel shall be fixed by the Secretary of Transportation for the entire period of such use at the time of execution of the contract for the construction of the new vessel.

(e) Recognition of Gain for Income Tax Purposes; Basis for Gain or Loss. No gain shall be recognized to the owner for the purpose of Federal income taxes in the case of a transfer of an obsolete vessel to the Secretary of Transportation under the provisions of this section. The basis for gain or loss upon a sale or exchange and for depreciation under the applicable Federal income-tax laws of a new vessel acquired as contemplated in this section shall be the same as the basis of the

obsolete vessel or vessels exchanged for credit upon the acquisition of such new vessel, increased in the amount of the cost of such vessel (other than the cost represented by such obsolete vessel or vessels) and decreased in the amount of loss recognized upon such transfer.

(f) **Report to Congress.** The Secretary of Transportation shall include in his annual report to Congress a detailed statement of all transactions consummated under the provisions of the preceding subsections during the period covered by such report.

(g) **Use of Vessels 25 Years Old or More.** An obsolete vessel acquired by the Secretary of Transportation under this section which is or becomes twenty-five years old or more, and vessels presently in the Secretary's laid-up fleet which are or become twenty-five years old or more, shall in no case be used for commercial operation, except that any such obsolete vessel, or any such vessel in the laid-up fleet may be used during any period in which vessels may be requisitioned under section 902 of this Act, as amended, and except as otherwise provided in this Act for the employment of the Secretary's vessels in steamship lines on trade routes exclusively serving the foreign trade of the United States.

(i)¹¹ **Exchange of Vessels; Valuation; Scrapping of Traded-Out Vessels.** The Secretary of Transportation is authorized to acquire suitable documented vessels, as defined in section 2101 of title 46, United States Code, with funds in the Vessel Operations Revolving Fund derived from the sale of obsolete vessels in the National Defense Reserve Fleet. For purposes of this subsection, the acquired and obsolete vessels shall be valued at their scrap value in domestic or foreign markets as of the date of the acquisition for or sale from the National Defense Reserve Fleet; except that, in a transaction subject to this section, the value assigned to those vessels will be determined on the same basis, with consideration given to the fair value of the cost of positioning the traded-out vessel to the place of scrapping. All costs incident to the lay-up of the vessel acquired under this subsection may be paid from balances in the Fund. Notwithstanding the provisions of sections 9 and 37 of the Shipping Act, 1916, vessels sold from the National Defense Reserve Fleet under this subsection may be scrapped in approved foreign markets.

(j) **Placement in National Defense Reserve Fleet of Acquired Vessels.** Any vessel heretofore or hereafter acquired under this section, or otherwise acquired by the Maritime Administration of the Department of Transportation under any other authority shall be placed in the national defense reserve fleet established under authority of section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and shall not be traded out or sold from such reserve fleet, except as provided for in subsections (g) and (i) of this section. This limitation

¹¹ Note the effect of the National Maritime Heritage Act, page 249, *infra*.

shall not affect the rights of the Secretary of Transportation to dispose of a vessel as provided in other sections of this title or in titles VII or XI of this Act.

SEC. 511. RESERVE FUNDS FOR CONSTRUCTION OR ACQUISITION OF VESSELS, TAXATION (46 App. U.S.C. 1161 (1999)).

(a) **“New Vessel” Defined.** When used in this section the term “new vessel” means any vessel (1) documented or agreed with the Secretary of Transportation to be documented under the laws of the United States; (2) constructed in the United States after December 31, 1939, or the construction of which has been financed under Titles V or VII of this Act, as amended, or the construction of which has been aided by a mortgage insured under Title XI of this Act as amended; and (3) either (A) of such type, size, and speed as the Secretary of Transportation shall determine to be suitable for use on the high seas or Great Lakes in carrying out the purposes of this Act, but not of less than two thousand gross tons or of less speed than twelve knots, unless the Secretary of Transportation shall determine and certify in each case that a vessel of a specified lesser tonnage or speed is desirable for use by the United States in case of war or national emergency, or (B) constructed to replace a vessel or vessels requisitioned or purchased by the United States.

(b) **Establishment of Construction Reserve Funds.** For the purposes of promoting the construction, reconstruction, reconditioning, or acquisition of vessels, or for other purposes authorized in this section, necessary to carrying out the policy set forth in title I of this Act, any citizen of the United States who is operating a vessel or vessels in the foreign or domestic commerce of the United States or in the fisheries or owns in whole or in part a vessel or vessels being so operated, or who, at the time of purchase or requisition of the vessel by the Government, was operating a vessel or vessels so engaged or owned in whole or in part a vessel or vessels being so operated or had acquired or was having constructed a vessel or vessels for the purpose of operation in such commerce or in the fisheries, may establish a construction reserve fund, for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for other purposes authorized in this section, to be composed of deposits of proceeds from sales of vessels, indemnities on account of losses of vessels, earnings from the operation of vessels documented under the laws of the United States and from services incident thereto, and receipts, in the form of interest or otherwise, with respect to amounts previously deposited. Such construction reserve fund shall be established, maintained, expended, and used in accordance with the provisions of this section and rules or regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury.

(c) Recognition of Gain for Taxation Where Proceeds of Sale or Indemnity for Loss Deposited in Fund. In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b), then—

(1) if the taxpayer so elects in his income-tax return for the taxable year in which the gain was realized, or

(2) in case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year beginning after December 31, 1939, and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, if the taxpayer so elects prior to the expiration of sixty days after the receipt of the payment or indemnity, and in accordance with a form of election to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purposes of Federal income or excess-profits taxes. If an election is made under subdivision (2) and if computation or recomputation in accordance with this subsection is otherwise allowable but is prevented, on the date of making such election or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election.

For the purposes of this subsection no amount shall be considered as deposited in a construction reserve fund unless it is deposited within sixty days after it is received by the taxpayer.

As used in this subsection the term “net proceeds” and the term “net indemnity” mean the sum of (1) the adjusted basis of the vessel and (2) the amount of gain which would be recognized to the taxpayer without regard to this subsection.

(d) Basis for Determining Gain or Loss and for Depreciation of New Vessels. The basis for determining gain or loss and for depreciation, for the purposes of Federal income or excess profits taxes, of any new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or with respect to which purchase-money indebtedness is liquidated as provided in subsection (g), in whole or in part out of the construction reserve fund shall be reduced by that portion of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel which represents gain not recognized for tax purposes under subsection (c).

(e) **Order, Proportions, etc., of Deposits and Withdrawals.** For the purposes of this section, (1) if the net proceeds of a sale or the net indemnity in respect of a loss are deposited in more than one deposit, the amount consisting of the gain shall be considered as first deposited; (2) amounts expended, obligated, or otherwise withdrawn shall be applied against the amounts deposited in the fund in the order of deposit; and (3) if any deposit consists in part of gain not recognized under subsection (c), any expenditure, obligation, or withdrawal applied against such deposit shall be considered to consist of gain in the proportion that the part of the deposit consisting of gain bears to the total amount of the deposit.

(f) **Amounts in Fund as Accumulation of Earnings or Profits.** With respect to any taxable year, amounts on deposit on the last day of such year in a construction reserve fund in accordance with this section and with respect to which all the requirements of subsection (g) of this section have been satisfied, to the extent that such requirements are applicable as of the last day of said taxable year, shall not constitute an accumulation of earnings or profits within the meaning of section 102 of the Internal Revenue Code (of 1939).

(g) **Benefits of Section Conditioned upon Manner and Time of Expenditure of Deposits.** The provisions of subsections (c) and (f) shall apply to any deposit in the construction reserve fund only to the extent that such deposit is expended or obligated for expenditure, in accordance with rules and regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury—

(1) under a contract for the construction or acquisition of a new vessel or vessels (or in the discretion of the Secretary of Transportation, for a part interest therein), or, with the approval of the Secretary of Transportation for the reconstruction or reconditioning of a new vessel or vessels, entered into within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of section 511(h), in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date, only if under such rules and regulations—

(A) within such period not less than 12 $\frac{1}{2}$ per centum of the construction or contract price of the vessel or vessels is paid or irrevocably committed on account thereof and the plans and specifications therefor are approved by the Secretary of Transportation to the extent by him deemed necessary; and

(B) in case of a vessel or vessels not constructed under the provisions of this title or not purchased from the Secretary of

Transportation, (i) said construction is completed, within six months from the date of the construction contract, to the extent of not less than 5 per centum thereof (or in case the contract covers more than one vessel, the construction of the first vessel so contracted for is so completed to the extent of not less than 5 per centum) as estimated by the Secretary of Transportation and certified by him to the Secretary of the Treasury, and (ii) all construction under such contract is completed with reasonable dispatch thereafter;

(2) for the liquidation of existing or subsequently incurred purchase-money indebtedness to persons other than a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel or vessels within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of section 511(h), in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date.

(h) **Authorizations of Extensions of Time.** The Secretary of Transportation is authorized under rules and regulations to be prescribed jointly by the Secretary of the Treasury and the Secretary of Transportation to grant extension of the period within which the deposits shall be expended or obligated or within which construction shall have progressed to the extent of 5 per centum of completion as provided herein, but such extension shall not be for an aggregate additional period in excess of two years with respect to the expenditure or obligation of such deposits or more than one year with respect to the progress of such construction: Provided, That until January 1, 1965, in addition to the extensions hereinbefore permitted, further extensions may be granted ending not later than December 31, 1965.

(i) **Taxation of Deposits upon Failure of Conditions.** Any such deposited gain or portion thereof which is not so expended or obligated within the period provided, or which is otherwise withdrawn before the expiration of such period, or with respect to which the construction has not progressed to the extent of 5 per centum of completion within the period provided, or with respect to which the Secretary of Transportation finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction is not completed with reasonable dispatch, if otherwise taxable income under the law applicable to the taxable year in which such gain was realized, shall be included in the gross income for such taxable year, except for the purpose of the declared value excess-profits tax and the capital stock tax. If any such deposited gain or portion thereof with respect to a deposit made in any taxable year ending on or before June 30, 1945 is so included in gross

income for such taxable year, there shall (in addition to any other deficiency) be assessed, collected, and paid in the same manner as if it were a deficiency, an amount equal to 1.1 per centum of the amount of gain so included, such amount being in lieu of any adjustment with respect to the declared value excess-profits tax for such taxable year.

(j) **Assessment and Collection of Deficiency Tax.** Notwithstanding any other provision of law, any deficiency in tax for any taxable year resulting from the inclusion of any amount in gross income as provided by subsection (i) of this section, and the amount to be treated as a deficiency under such subsection in lieu of any adjustment with respect to the declared value excess-profits tax, may be assessed or a proceeding in court for the collection thereof may be begun without assessment, at any time: Provided, however, That interest on any such deficiency or amount to be treated as a deficiency shall not begin until the date the deposited gain or portion thereof in question is required under subsection (i) to be included in gross income.

(k) **Taxable Years Governed by this Section.** This section shall be applicable to a taxpayer only in respect of sales or indemnifications for losses occurring within a taxable year beginning after December 31, 1939, and only in respect of earnings derived during a taxable year beginning after December 31, 1939.

(l) **Vessels Deemed Constructed or Acquired by Taxpayers Owning Stock in Corporations Constructing or Acquiring Vessels.** For the purposes of this section a vessel shall be considered as constructed or acquired by the taxpayer if constructed or acquired by a corporation at a time when the taxpayer owns at least 95 per centum of the total number of shares of each class of stock of the corporation.

(m) **Definitions.** The terms used in this section shall have the same meaning as in chapter 1 of Title 26.

(n) **“Contract for the construction” and “construction contract” defined.** The terms “contract for the construction” and “construction contract”, as used in this section, shall include, in the case of a taxpayer who constructs a new vessel in a shipyard owned by such taxpayer, an agreement between such taxpayer and the Secretary of Transportation with respect to such construction and containing provisions deemed necessary or advisable by the Secretary of Transportation to carry out the purposes and policy of this section.

(o) **“Reconstruction and reconditioning” defined.** The terms “reconstruction and reconditioning”, as used in this section, shall include the reconstruction, reconditioning, or modernization of a vessel for exclusive use on the Great Lakes, including the Saint Lawrence River and Gulf, if the Secretary of Transportation determines that the

objectives of this Act will be promoted by such reconstruction, reconditioning, or modernization, and, notwithstanding any other provisions of law, such vessel shall be deemed to be a "new vessel" within the meaning of this section for such reconstruction, reconditioning, or modernization.

SEC. 512.¹² LIMITATION ON RESTRICTIONS (46 App. U.S.C. 1162 (1999)).

Notwithstanding any other provision of law or contract, all restrictions and requirements under sections 503, 506, and 802 applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.

¹² Section 512 was added by Section 7 of Public Law 104-239, approved October 8, 1996 (110 STAT. 3133), the Maritime Security Act of 1996.

TITLE VI—VESSEL OPERATING ASSISTANCE PROGRAMS

SUBTITLE A—OPERATING DIFFERENTIAL SUBSIDY PROGRAM¹³

SEC. 601. SUBSIDY AUTHORIZED FOR OPERATION OF VESSELS IN FOREIGN TRADE OR IN OFF-SEASON CRUISES (46 App. U.S.C. 1171 (1999)).

(a) Application for subsidy; conditions precedent to granting.

The Secretary of Transportation is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises authorized under section 613 of this title. In this title VI the term “essential service” means the operation of a vessel on a service, route, or line described in section 211(a) or in bulk cargo carrying service described in section 211(b). No such application shall be approved by the Secretary of Transportation unless he determines that (1) the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition and to promote the foreign commerce of the United States except to the extent such vessels are to be operated on cruises authorized under section 613 of this title, and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date; (2) the applicant owns or leases, or can and will build or purchase or lease, a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate in an essential service, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this Act. To the extent the application covers cruises, as authorized under section 613 of this title, the Secretary of Transportation may make the portion of this last determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

¹³ Note the effect of Section 616, page 73, *infra*, on the provisions of Subtitle A.

(b) **Statements as to financial interests to accompany application; penalty for false statements.** Every application for an operating-differential subsidy under the provisions of this title shall be accompanied by statements disclosing the names of all persons having any pecuniary interest, direct or indirect, in such application, or in the ownership or use of the vessel or vessels, routes, or lines covered thereby, and the nature and extent of any such interest, together with such financial and other statements as may be required by the Secretary of Transportation. All such statements shall be under oath or affirmation and in such form as the Secretary of Transportation shall prescribe. Any person who, in an application for financial aid under this title or in any statement required to be filed therewith, willfully makes any untrue statement of a material fact, shall be guilty of misdemeanor.

SEC. 602. DETERMINATIONS OF NECESSITY OF SUBSIDY TO MEET COMPETITION (46 App. U.S.C. 1172 (1999)).

Except with respect to cruises authorized under section 613 of this title, no contract for an operating-differential subsidy shall be made by the Secretary of Transportation for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Secretary of Transportation, after a full and complete investigation and hearing, shall determine that an operating-differential subsidy is necessary to meet competition of foreign-flag ships.

SEC. 603. CONTRACTS FOR PAYMENT OF SUBSIDY (46 App. U.S.C. 1173 (1999)).

(a) **Authorization of contracts.** If the Secretary of Transportation approves the application, he may enter into a contract with the applicant for the payment of an operating- differential subsidy determined in accordance with the provisions of subsection (b) of this section, for the operation of such vessel or vessels in an essential service and in cruises authorized under section 613 of this title for a period not exceeding twenty years, and subject to such reasonable terms and conditions, consistent with this Act, as the Secretary of Transportation shall require to effectuate the purposes and policy of this Act, including a performance bond with approved sureties, if such bond is required by the Secretary of Transportation.

(b) **Amount of subsidy.** Such contract shall provide, except as the parties should agree upon a lesser amount, that the amount of the operating-differential subsidy for the operation of vessels in an essential service shall equal the excess of the subsidizable wage costs of the United States officers and crews, the fair and reasonable cost of insurance, subsistence of officers and crews on passenger vessels, as defined in section 613 of this Act, maintenance, and repairs not compensated by insurance, incurred in the operation under United States registry of the

vessel or vessels covered by the contract, over the estimated fair and reasonable cost of the same items of expense (after deducting therefrom any estimated increase in such items necessitated by features incorporated pursuant to the provisions of section 501(b)) if such vessel or vessels were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel or vessels covered by the contract: Provided, however, That the Secretary of Transportation may, with respect to any vessel in an essential bulk cargo carrying service as described in section 211(b), pay, in lieu of the operating-differential subsidy provided by this subsection (b), such sums as he shall determine to be necessary to make the cost of operating such vessel competitive with the cost of operating similar vessels under the registry of a foreign country. For any period during which a vessel cruises as authorized by section 613 of this Act, operating-differential subsidy shall be computed as though the vessel were operating on the essential service to which the vessel is assigned: Provided, however, That if the cruise vessel calls at a port or ports outside of its assigned service, but which is served with passenger vessels (as defined in section 613 of this Act) by another subsidized operator at an operating-differential subsidy rate for wages lower than the cruise vessel has on its assigned essential service, the operating-differential subsidy rates for each of the subsidizable items for each day (a fraction of a day to count as a day) that the vessel stops at such port shall be at the respective rates applicable to the subsidized operator regularly serving the area.

(c) “Collective bargaining costs”, “base period costs”, “base period”, and “subsidizable wage costs of United States officers and crews” defined; determination of collective bargaining costs and establishment of new base periods; wage change index..

(1) When used in this section—

(A) The term “collective bargaining costs” means the annual cost, calculated on the basis of the per diem rate of expense as of any date, of all items of expense required of the applicant through collective bargaining or other agreement, covering the employ of United States officers and crew of a vessel, including payments required by law to assure old-age pensions, unemployment benefits, or similar benefits and taxes or other governmental assessments on crew payrolls, but excluding subsistence of officers and crews on vessels other than passenger vessels as defined in section 613 of this Act and costs relating to:

(i) the officers or members of the crew that the Secretary of Transportation has found, prior to the award of a contract for the construction or reconstruction of a vessel, to be unnecessary for the efficient and economical operation of such vessel: Provided, That the Secretary of Transportation shall afford representatives of the

collective-bargaining unit or units responsible for the manning of the vessel an opportunity to comment on such finding prior to the effective date of such finding: And provided further, That in determining whether officers or members of the crew are necessary for the efficient and economical operation of such vessel, the Secretary of Transportation shall give due consideration to, but shall not be bound by, wage and manning scales and working conditions required by a bona fide collective-bargaining agreement, or

(ii) those officers or members of the crew that the Secretary of Transportation has found, prior to ninety days following the date of enactment of this subsection, to be unnecessary for the efficient and economical operation of the vessel.

(B) The term "base period costs" means for the base period beginning July 1, 1970, and ending June 30, 1971, the collective-bargaining costs as of January 1, 1971, less all other items of cost that have been disallowed by the Secretary of Transportation prior to ninety days following the date of enactment of this subsection, and not already excluded from collective-bargaining costs under subparagraph (A)(i) or (A)(ii) of this subsection. In any subsequent base period the term "base period costs" means the average of the subsidizable wage cost of United States officers and crews for the preceding annual period ending June 30 (calculated without regard to the limitation of the last sentence of paragraph (D) of this subdivision but increased or decreased by the increase or decrease in the index described in subdivision (3) of this subsection from January 1 of such annual period to January 1 of the base period), and the collective-bargaining costs as of January 1 of the base period: Provided, That in no event shall the base period costs be such that the difference between the base period cost and the collective-bargaining costs as of January 1 of any base period subsequent to the first base period exceeds five-fourths of 1 per centum of the collective-bargaining costs as of such January 1 multiplied by the number of years that have elapsed since the most recent base period

(C) The term "base period" means any annual period beginning July 1, and ending June 30 with respect to which a base period cost is established.

(D) The term "subsidizable wage costs of United States officers and crews" in any period other than a base period means the most recent base period costs increased or decreased by the increase or decrease from January 1 of such base period to January 1 of such period in the index described in subdivision (3) hereof, and with respect to a base period means the base period cost. The subsidizable wage costs of United States officers and crews in any period other than a base

period shall not be less than 90 per centum of the collective-bargaining costs as of January 1 of such period nor greater than 110 per centum of such collective-bargaining costs.

(2) The Secretary of Transportation shall determine the collective-bargaining costs on ships in subsidized operation as of January 1, 1971, and as of each January 1 thereafter, and shall as of intervals of not less than two years nor more than four years, establish a new base period cost, except that the Secretary shall not establish a new base period unless he announces his intention to do so prior to the December 31 that would be included in the new base period.

(3) The Bureau of Labor Statistics shall compile the index referred to in subdivision (1). Such index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective-bargaining agreements with equal weight to be given to changes affecting employees in the transportation industry (excluding the offshore maritime industry) and to changes affecting employees in private nonagricultural industries other than transportation. Such index shall be based on the materials regularly used by the Bureau of Labor Statistics in compiling its regularly published statistical series on wage and benefit changes arrived at through collective bargaining. Such materials shall remain confidential and not be subject to disclosure.

(d) **Foreign wage computation; foreign manning.** Each foreign wage cost computation shall be made after an opportunity is given to the contractor to submit in writing and in timely fashion all relevant data within his possession. In making the computation, the Secretary shall consider all relevant matter so presented and all foreign wage cost data collected at his request or on his behalf. Such foreign cost data shall be made available to an interested contractor, unless the Secretary shall find that disclosure of the data will prevent him from obtaining such data in the future. In determining foreign manning for purposes of this section, the foreign manning determined for any ship type with respect to any base period shall not be redetermined until the beginning of a new base period.

(e) **Monthly payment of wage subsidy; procedures for calculation and payment of subsidy on certain expenses.** The wage subsidy shall be payable monthly for the voyages completed during the month, upon the contractor's certification that the subsidized vessels were in authorized service during the month. The Secretary of Transportation shall prescribe procedures for the calculation and payment of subsidy on items of expense which are included in "collective-bargaining costs" but are not included in the daily rate because they are unpredictably timed.

(f) **Monthly percentage payment of other than wage subsidy; security for refund of overpayments; payment of remainder after audit of voyage accounts.** Ninety percent of the amount of the insurance and maintenance and repair and subsistence of officers and crews subsidy shall be payable monthly for the voyages completed during the month on the basis of the subsidy estimated to have accrued with respect to such voyages. Any such payment shall be made only after there has been furnished to the Secretary of Transportation such security as he deems to be reasonable and necessary to assure refund of any overpayment. The contractor and the Secretary of Transportation shall audit the voyage accounts as soon as practicable after such payment. The remaining 10 percent of such subsidy shall be payable after such audit.

SEC. 604. ADDITIONAL SUBSIDY; WHEN AUTHORIZED (46 App. U.S.C. 1174 (1999)). If in the case of any particular foreign-trade route the Secretary of Transportation shall find after consultation with the Secretary of State, that the subsidy provided for in this title is in any respect inadequate to offset the effect of governmental aid paid to foreign competitors, he may grant such additional subsidy as he determines to be necessary for that purpose.

SEC. 605. VESSELS EXCLUDED FROM SUBSIDY (46 App. U.S.C. 1175 (1999)).

(a) **Vessels engaged in coastwise or intercoastal trade; vessels on inland waterways.** No operating-differential subsidy shall be paid for the operation of any vessel on a voyage on which it engages in coastwise or intercoastal trade: Provided, however, That such subsidy may be paid on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States or a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and if the subsidized vessel earns any gross revenue on the carriage of mail, passengers, or cargo by reason of such coastal or intercoastal trade the subsidy payment for the entire voyage shall be reduced by an amount which bears the same ratio to the subsidy otherwise payable as such gross revenue bears to the gross revenue derived from the entire voyage. No vessel operating on the inland waterways of the United States shall be considered for the purposes of this Act to be operating in foreign trade.

(b) **Limitation on payments for older vessels.** No operating-differential subsidy shall be paid for the operation of a vessel after the calen-

dar year the vessel becomes 25 years of age, unless the Secretary of Transportation has determined, before the date of enactment of the Maritime Security Act of 1996,¹⁴ that it is in the public interest to grant such financial aid for the operation of such vessel.

(c) **Vessels to be operated in an essential service served by citizens of the United States.** No contract shall be made under this title with respect to a vessel to be operated in an essential service served by citizens of the United States which would be in addition to the existing service, or services, unless the Secretary of Transportation shall determine after proper hearing of all parties that the service already provided by vessels of United States registry is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon; and no contract shall be made with respect to a vessel operated or to be operated in an essential service served by two or more citizens of the United States with vessels of United States registry, if the Secretary of Transportation shall determine the effect of such a contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in such essential service, unless following public hearing, due notice of which shall be given to each operator serving such essential service, the Secretary of Transportation shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry. The Secretary of Transportation, in determining for the purposes of this section whether services are competitive, shall take into consideration the type, size, and speed of the vessels employed, whether passenger or cargo, or combination passenger and cargo, vessels, the ports or ranges between which they run, the character of cargo carried, and such other facts as he may deem proper.

SEC. 606. READJUSTMENTS, CHANGE IN SERVICE, WITHDRAWAL FROM SERVICE; PAYMENT OF EXCESS PROFITS; WAGES, ETC.; AMERICAN MATERIALS (46 App. U.S.C. 1176 (1999)). Every contract for an operating-differential subsidy under this title shall provide (1) that the amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Secretary of Transportation or of the contractor. If any such readjustment cannot be reached by mutual agreement, the Secretary of Transportation, on his own motion or on the application of the contrac-

¹⁴ The Maritime Security Act of 1996, was enacted on October 8, 1996.

tor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as he may determine to be fair and reasonable and in the public interest. The testimony in every such proceeding shall be reduced to writing and filed in the office of the Secretary of Transportation. His decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Secretary of Transportation shall state his findings of fact; (2) that the compensation to be paid under it shall be reduced, under such terms and in such amounts as the Secretary of Transportation shall determine, for any periods in which the vessel or vessels are laid up; (3) that if the Secretary of Transportation shall determine that a change in an essential service, which is receiving an operating-differential subsidy under this title, is necessary in the accomplishment of the purposes of this Act, he may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions; (4) that if at any time the contractor receiving an operating-differential subsidy claims that he cannot maintain and operate his vessels in such an essential service, with a reasonable profit upon his investment, and applies to the Secretary of Transportation for a modification or rescission of his contract to maintain such essential service, and the Secretary of Transportation determines that such claim is proved, the Secretary of Transportation shall modify or rescind such contract and permit the contractor to withdraw such vessels from such essential service, upon a date fixed by the Secretary of Transportation, and upon the date of such withdrawal the further payment of the operating-differential subsidy shall cease and the contractor be discharged from any further obligation under such contract; (5) that the contractor shall conduct his operations with respect to essential service, and any services authorized under section 613 of this title, covered by his contract in an economical and efficient manner; and (6) that whenever practicable, an operator who receives subsidy with respect to subsistence of officers and crews shall use as such subsistence items only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in section 505 herein, except when it is necessary to purchase supplies outside the United States to enable such vessel to continue and complete her voyage, and an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico, except in an emergency.

SEC. 607. CAPITAL CONSTRUCTION FUND (46 App. U.S.C. 1177 (1999)).¹⁵

(a) **Agreement rules; persons eligible; replacement, additional, or reconstructed vessels for prescribed trade and fishery operations; amount of deposits, annual limitation; conditions and requirements for deposits and withdrawals.** Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)) may enter into an agreement with the Secretary under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the “fund”) with respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f). The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person’s taxable income for such year (computed in the manner provided in subsection (b)(1)(A)) which is attributable to the operation of the agreement vessels.

(b) **Ceiling on deposits; lessees; “agreement vessel” defined.**

(1) The amount deposited under subsection (a) in the fund for any taxable year shall not exceed the sum of;

(A) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 of the Internal Revenue Code of 1954 but without regard to the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States,

¹⁵ Section 261 of Public Law 99-514, approved October 22, 1986 (100 STAT. 2085), the Tax Reform Act of 1986, coordinated the application of the Internal Revenue Code of 1986 (Code) with the Capital Construction Fund program. Section 261 of Public Law 99-514 amended section 26(b)(2) of the Code and section 607 of the Merchant Marine Act, 1936, and added a new section 7518 to Chapter 77 of the Code. These amendments apply to taxable years beginning after December 31, 1986.

(B) the amount allowable as a deduction under section 167 of the Internal Revenue Code of 1954 for such year with respect to the agreement vessels,

(C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from (i) the sale or other disposition of any agreement vessel, or (ii) insurance or indemnity attributable to any agreement vessel, and

(D) the receipts from the investment or reinvestment of amounts held in such fund.

(2) In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under this section, the owner is required or permitted to deposit for such period with respect to such vessel by reason of paragraph (1)(B).

(3) For purposes of paragraph (1), the term "agreement vessel" includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.

(c) Investment requirements; depositories; fiduciary requirements; interest-bearing securities; stock: percentage for domestic issues, listing and registration, prudent acquisitions, value and percentage equilibrium, and treatment of preferred issues. Amounts in any fund established under this section shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary. They may be invested only in interest-bearing securities approved by the Secretary; except that, if the Secretary consents thereto, an agreed percentage (not in excess of 60 percent) of the assets of the fund may be invested in the stock of domestic corporations. Such stock must be currently fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange, and must be stock which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital. If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in such a way as to tend to restore the fund to a situation in which the fair market value of the stock does not exceed such agreed percentage. For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection and if the preferred stock of such corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

(d) Nontaxability of deposits; eligible deposits.

(1) For purposes of the Internal Revenue Code of 1954—

(A) taxable income (determined without regard to this section and section 7518 of such Code) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (b)(1)(A),

(B) gain from a transaction referred to in subsection (b)(1)(C) shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund,

(C) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account,

(D) the earnings and profits of any corporation (within the meaning of section 316 of such Code) shall be determined without regard to this section and section 7518 of such Code, and

(E) in applying the tax imposed by section 531 of such Code (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

(2) Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.

(e) Accounts within fund: capital account, capital gain account, and ordinary income account; limitation on capital losses. For purposes of this section—

(1) Within the fund established pursuant to this section three accounts shall be maintained:

(A) the capital account,

(B) the capital gain account, and

(C) the ordinary income account.

(2) The capital account shall consist of—

(A) amounts referred to in subsection (b)(1)(B),

(B) amounts referred to in subsection (b)(1)(C) other than that portion thereof which represents gain not taken into account by reason of subsection (d)(1)(B),

(C) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (d)(1)(C)) be allowed a deduction under section 243 of the Internal Revenue Code of 1954, and

(D) interest income exempt from taxation under section 103 of such Code.

(3) The capital gain account shall consist of—

(A) amounts representing capital gains on assets held for more than 6 months and referred to in subsection (b)(1)(C) or (b)(1)(D) reduced by

(B) amounts representing capital losses on assets held in the fund for more than 6 months.

(4) The ordinary income account shall consist of—

(A) amounts referred to in subsection (b)(1)(A),

(B) (i) amounts representing capital gains on assets held for 6 months or less and referred to in subsection (b)(1)(C) or (b)(1)(D), reduced by—

(ii) amounts representing capital losses on assets held in the fund for 6 months or less,

(C) interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,

(D) ordinary income from a transaction described in subsection (b)(1)(C), and

(E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph.

(5) Except on termination of a fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

(f) Purposes of qualified withdrawals; nonqualified withdrawal treatment for nonfulfillment of substantial obligations.

(1) A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:

(A) the acquisition, construction, or reconstruction of a qualified vessel,

(B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel, or

(C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge or container which is part of the complement of a qualified vessel.

Except to the extent provided in regulations prescribed by the Secretary subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

(2) Under joint regulations, if the Secretary determines that any substantial obligation under or any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

(g) Tax treatment of qualified withdrawals; basis reduction.

(1) Any qualified withdrawal from a fund shall be treated—

- (A) first as made out of the capital account,
- (B) second as made out of the capital gain account, and
- (C) third as made out of the ordinary income account.

(2) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the ordinary income account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(3) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(4) If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.

(5) If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (h)(3)(A) which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

(h) Tax treatment of nonqualified withdrawals; FIFO and LIFO bases; interest rate.

(1) Except as provided in subsection (i), any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

(2) Any nonqualified withdrawal from a fund shall be treated—

- (A) first as made out of the ordinary income account,
- (B) second as made out of the capital gain account, and
- (C) third as made out of the capital account.

For purposes of this section, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced ship design, machinery and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (g)(4), shall be treated as withdrawn on a last-in-first-out basis.

(3) For purposes of the Internal Revenue Code of 1954—

(A) any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made,

(B) any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 6 months, and

(C) for the period on or before the last date prescribed for payment of tax for the taxable year in which this withdrawal is made—

(i) no interest shall be payable under section 6601 of such Code and no addition to the tax shall be payable under section 6651 of such Code,

(ii) interest on the amount of the additional tax attributable to any item referred to in subparagraph (A) or (B) shall be paid at the applicable rate (as defined in paragraph (4)) from the last date prescribed for payment of the tax for the taxable year for which such item was deposited in the fund, and

(iii) no interest shall be payable on amounts referred to in clauses (i) and (ii) of paragraph (2) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 606(5) of the Merchant Marine Act of 1936 as in effect on December 31, 1969.

(4) For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal—

(A) made in a taxable year beginning in 1970 or 1971 is 8 percent, or

(B) made in a taxable year beginning after 1971, shall be determined and published jointly by the Secretary of the Treasury and the Secretary and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the relationship which the money rates and investment yields for the cal-

endar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.

(5) *Amount not withdrawn from fund after 25 years from deposit taxed as nonqualified withdrawal.*

(A) **In general.** The applicable percentage of any amount which remains in a capital construction fund at the close of the 26th, 27th, 28th, 29th, or 30th taxable year following the taxable year for which such amount was deposited shall be treated as a nonqualified withdrawal in accordance with the following table:

<i>If the amount remains in the fund at the close of the—</i>	<i>The applicable percentage is—</i>
26th taxable year	20 percent
27th taxable year	40 percent
28th taxable year	60 percent
29th taxable year	80 percent
30th taxable year	100 percent.

(B) **Earnings treated as deposits.** The earnings of any capital construction fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount deposited for such taxable year.

(C) **Amounts committed treated as withdrawn.** For purposes of subparagraph (A), an amount shall not be treated as remaining in a capital construction fund at the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with respect to an identified item for which such withdrawal may be made.

(D) **Authority to treat excess funds as withdrawn.** If the Secretary determines that the balance in any capital construction fund exceeds the amount which is appropriate to meet the vessel construction program objectives of the person who established such fund, the amount of such excess shall be treated as a nonqualified withdrawal under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.

(E) **Amounts in fund on January 1, 1987.** For purposes of this paragraph, all amounts in a capital construction fund on January 1, 1987, shall be treated as deposited in such fund on such date.

(6) *Nonqualified withdrawals taxed at highest marginal rate.*

(A) **In general.** In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 shall be determined— (i) by excluding such withdrawal from gross income, and (ii) by increasing the tax imposed by chapter 1 of

such Code by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a corporation) of such Code.

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code applies, the rate of tax taken into account under the preceding sentence shall not exceed 20 percent (34 percent in the case of a corporation).¹⁶

(B) Tax benefit rule. If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 for any taxable year preceding the taxable year in which such withdrawal occurs—

(i) such portion shall not be taken into account under subparagraph (A), and

(ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 of such Code for the taxable year in which such withdrawal occurs.

(i) Corporate reorganizations and partnership changes. Under joint regulations—

(1) a transfer of a fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1954 applies may be treated as if such transaction did not constitute a nonqualified withdrawal, and

(2) a similar rule shall be applied in the case of a continuation of a partnership (within the meaning of subchapter K of such Code.

(j) Treatment of existing funds; relation of old to new fund.

(1) Any person who was maintaining a fund or funds (hereinafter in this subsection referred to as "old fund") under this section (as in effect before the enactment of this subsection) may elect to continue such old fund but—

(A) may not hold moneys in the old fund beyond the expiration date provided in the agreement under which such old fund is maintained (determined without regard to any extension or renewal entered into after April 14, 1970),

(B) may not simultaneously maintain such old fund and a new fund established under this section, and

¹⁶ Section 311(c)(2) of Public Law 105-35, approved August 5, 1997 (111 STAT. 835), the Taxpayer Relief Act of 1997, conformed this provision with the reduction in the capital gains tax from 28 to 20 percent. Section 311(d) of such Act provides that this amount is applicable to taxable years ending after May 6, 1997.

(C) if he enters into an agreement under this section to establish a new fund, may agree to the extension of such agreement to some or all of the amounts in the old fund.

(2) In the case of any extension of an agreement pursuant to paragraph (1)(C), each item in the old fund to be transferred shall be transferred in a nontaxable transaction to the appropriate account in the new fund established under this section. For purposes of subsection (h)(3)(C), the date of the deposit of any item so transferred shall be July 1, 1971, or the date of the deposit in the old fund, whichever is the later.

(k) **Definitions.**¹⁷ For the purposes of this section—

(1) The term “eligible vessel” means any vessel—

(A) constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) documented under the laws of the United States, and

(C) operated in the foreign or domestic commerce of the United States or in the fisheries of the United States.

Any vessel which (i) was constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or (ii) constructed outside the United States for use in the United States foreign trade pursuant to a contract entered into before April 15, 1970, shall be treated as satisfying the requirements of subparagraph (A) of this paragraph and the requirements of subparagraph (A) of paragraph (2).

(2) The term “qualified vessel” means any vessel—

(A) constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) documented under the laws of the United States, and

(C) which the person maintaining the fund agrees with the Secretary will be operated in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States.

(3) The term “agreement vessel” means any eligible vessel or qualified vessel which is subject to an agreement entered into under this section.

(4) The term “United States”, when used in a geographical sense, means the continental United States including Alaska, Hawaii, and Puerto Rico.

(5) The term “United States foreign trade” includes (but is not limited to) those areas in domestic trade in which a vessel built with construc-

¹⁷ See also 46 App. U.S.C. 1177-1 for certain commercial fishing vessels that also qualify as an “eligible vessel” and a “qualified vessel” under the Capital Construction Fund.

tion-differential subsidy is permitted to operate under the first sentence of section 506 of this Act.

(6) The term “joint regulations” means regulations prescribed under subsection (1)

(7) The term “vessel” includes cargo handling equipment which the Secretary of Commerce determines is intended for use primarily on the vessel. The term “vessel” also includes an ocean-going towing vessel or an ocean-going barge or comparable towing vessel or barge operated on the Great Lakes.

(8) The term “noncontiguous trade” means (i) trade between the contiguous forty-eight States on the one hand and Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States on the other hand, and (ii) trade from any point in Alaska, Hawaii, Puerto Rico, and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico, and such territories and possessions.

(9) The term “Secretary” means the Secretary of Commerce with respect to eligible or qualified vessels operated or to be operated in the fisheries of the United States, and the Secretary of Transportation with respect to all other vessels.

(l) **Records; reports; rules and regulations; termination of agreement upon changes in regulations with substantial effect on rights or obligations.** Each person maintaining a fund under this section shall keep such records and shall make such reports as the Secretary or the Secretary of the Treasury shall require. The Secretary of the Treasury and the Secretary shall jointly prescribe all rules and regulations, not inconsistent with the foregoing provisions of this section, as may be necessary or appropriate to the determination of tax liability under this section. If, after an agreement has been entered into under this section, a change is made either in the joint regulations or in the regulations prescribed by the Secretary under this section which could have a substantial effect on the rights or obligations of any person maintaining a fund under this section, such person may terminate such agreement.

(m) **Departmental reports and certification.**

(1) ***In general.*** For each calendar year, the Secretaries shall each provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds that are under their jurisdiction.

(2) ***Contents of reports.*** Each report shall set forth the name and taxpayer identification number of each person—

(A) establishing a capital construction fund during such calendar year;

(B) maintaining a capital construction fund as of the last day of such calendar year;

(C) terminating a capital construction fund during such calendar year;

(D) making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

(E) with respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

SEC. 608. SALE OR ASSIGNMENT OF CONTRACT; CONSENT OF SECRETARY; PURCHASER SUBJECT TO TERMS OF CONTRACT; RESCINDING CONTRACT ON TRANSFER WITHOUT CONSENT (46 App. U.S.C. 1178 (1999)). No contract executed under this title or any interest therein shall be sold, assigned, or transferred, either directly or indirectly, or through any reorganization, merger, or consolidation, nor shall any agreement or arrangement be made by the holder whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the written consent of the Secretary of Transportation. If he consents to such agreement or arrangement, the agreement or arrangement shall make provision whereby the person undertaking such maintenance, management, or operation agrees to be bound by all of the provisions of the contract and of this Act applicable thereto, and the rules and regulations prescribed pursuant to this Act. If the holder of any such contract shall voluntarily sell such contract or any interest therein, or make such assignment, transfer, agreement, or arrangement whereby the maintenance, management, or operation of the service route, line, vessel, or vessels is to be performed by any other person, without the consent of the Secretary of Transportation, or if the operation of the service route, line, or vessel, shall pass out of the direct control of the holder of such contract by reason of any voluntary or involuntary receivership or bankruptcy proceedings, the Secretary of Transportation shall have the right to modify or rescind such contract, without further liability thereon by the United States, and is hereby vested with exclusive jurisdiction to determine the purposes for which any payments made by him under such contract shall be expended.

SEC. 609. WITHHOLDING PAYMENT TO DEFAULTING CONTRACTOR (46 App. U.S.C. 1179 (1999)). The Secretary of Transportation shall withhold the payment of operating-differential subsidy while any contractor therefor is in default in any payments due on account of construction-loan, ship-sales mortgage notes, or any other

obligation due the United States, and shall apply the amount so withheld to the satisfaction of such debt.

SEC. 610. VESSELS ELIGIBLE FOR SUBSIDY (46 App. U.S.C. 1180 (1999)). An operating-differential subsidy shall not be paid under authority of this title on account of the operation of any vessel which does not meet the following requirements: (1) The vessel shall be of steel or other acceptable metal, shall be propelled by steam or motor, shall be as nearly fireproof as practicable, shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date, and shall be documented under the laws of the United States, during the entire life of the subsidy contract; and (2) if the vessel shall be constructed after the passage of this Act it shall be either a vessel constructed according to plans and specifications approved by the Secretary of Transportation and the Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or a vessel approved by the Secretary of Transportation and the Navy Department as otherwise useful to the United States in time of national emergency.

SEC. 611. TRANSFER OF VESSELS TO FOREIGN REGISTRY ON DEFAULT OF UNITED STATES (46 App. U.S.C. 1181 (1999)).

(a) **Application; hearing; grant or denial.** The contractor, upon compliance with the provisions of this section, may transfer to foreign registry the vessels covered by any operating-differential subsidy contract held by him, in the event that the United States defaults upon such contract or cancels it without just cause. Any contractor desiring to transfer any such vessel to foreign registry upon such default or cancellation shall file an application in writing with the Secretary of Transportation setting forth its contentions with respect to the lack of just cause or lawful grounds for such default or cancellation. The Secretary of Transportation shall afford the contractor an opportunity for a hearing within twenty days after such contractor files written application therefor, and after the testimony, if any, in such hearing has been reduced to writing and filed with the Secretary of Transportation, he shall, within a reasonable time, grant or deny the application by order.

(b) **Appeal from denial of application.** If any such application is denied, the contractor may obtain a review of the order of denial in the United States Court of Appeals for the District of Columbia, by filing in such court, within twenty days after the entry of such order, a written petition praying that the order of the Secretary of Transportation be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of Transportation or any officer designated

by him for that purpose, and thereupon the Secretary of Transportation shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of Title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such order. The judgment and decree of the court affirming or setting aside any such order of the Secretary of Transportation shall be final.

(c) **Effectiveness of transfer.** No transfer of vessels to foreign registry under this section shall become effective until any indebtedness to the Government or to any citizen of the United States, secured by such vessels, has been paid or discharged, and until after the expiration of ninety days from the date of final determination of the application or the appeal, if any. Within such ninety-day period the Secretary of Transportation may (1) with the consent of the contractor purchase the vessels at cost to the contractor plus cost of capital improvements thereon, less 4 per centum annual depreciation upon such vessel, and the actual depreciated costs of capital improvements thereon, or (2) reinstate the contract and adjust or settle the default found by the Secretary of Transportation or the court to exist.

SEC. 613. OFF-SEASON CRUISES BY PASSENGER VESSELS (46 App. U.S.C. 1183 (1999)).

(a) **"Passenger vessel" defined.** In this section, "passenger vessel" means a vessel which

(1) is of not less than ten thousand gross tons, and (2) has accommodations for not less than one hundred passengers.

(b) **Authorization for payment of subsidy.** If the Secretary of Transportation finds that the operation of any passenger vessel with respect to which a contract for the payment of an operating-differential subsidy has been entered into under section 603 of this title effective before January 2, 1960, is not required for all of each year, in order to furnish adequate service on the service, route, or line covered by such contract, he may amend such contract to agree to pay an operating-differential subsidy for operation of the vessel (1) on such service, route, or line for some part or no part of each year, and (2) on cruises for all or part of each year if such specific cruise is approved by the Secretary of Transportation under subsection (e) of this section: Provided, however, That no such vessel may cruise for more than seven months of each year to ports which are regularly served by another United States-flag passenger vessel pursuant to an operating-differential subsidy contract.

(c) **Authorization for payment of subsidy to passenger vessels providing domestic service.** The Secretary of Transportation may

authorize passenger vessels under operating-differential subsidy contracts to provide domestic service between specified ports while the vessels are on voyages in an essential service in the foreign commerce of the United States without reduction of operating-differential subsidy and the partial payback of construction-differential subsidy for operating in the domestic trades, if he finds that such domestic service will not result in a substantial deviation from the service, route, or line for which operating-differential subsidy is paid and will not adversely affect service on such service, route, or line.

(d) Conditions for cruises or domestic service while on voyages in an essential service in foreign commerce. When a vessel is being operated on cruises or has been authorized under this section to provide domestic passenger services while on voyages in an essential service in foreign commerce of the United States—

(1) except as provided in subdivision (4) of this subsection, it shall carry no mail unless required by law, or cargo except passengers' luggage, except between those ports between which it may carry mail and cargo on its regular service assigned by contract;

(2) it may not carry one-way passengers between those ports served by another United States carrier on its regular service assigned by contract, without the consent of such carrier, except between those ports between which it may carry one-way passengers on its own regular service assigned by contract;

(3) it shall stop at other domestic ports only for the same time and the same purpose as is permitted with respect to a foreign-flag vessel which is carrying passengers who embarked at a domestic port, except that a cruise may end at a different port or coast from that where it began and may embark or disembark passengers at other domestic ports, either when not involving transportation in the domestic offshore trade in competition with a United States-flag passenger vessel offering berth service therein, or, if involving such transportation, with the consent of such carrier: Provided, however, That nothing herein shall be construed to repeal or modify section 805(a) of this Act.

(4) Any other provisions of the Merchant Marine Act, 1936, or of the Shipping Act, 1916, to the contrary notwithstanding, with the approval of the Secretary of Transportation, it may carry cargo and mail between ports to the extent such carriage is not in direct competition with a carrier offering United States-flag berth service between those ports, or, if such carriage is in direct competition with one or more carriers offering United States-flag berth service between such ports, with the consent of the next scheduled United States-flag carrier, which consent shall not be unreasonably withheld in the judgment of the Maritime Administrator.

Section 605(c) of this Act shall not apply to cruises authorized under this section. Notwithstanding the applicable provisions of section 605(a)

and section 506 of this Act requiring the reduction of operating differential subsidy and the partial payback of construction differential subsidy for operating in the domestic trades, such reduction of operating subsidy and partial payback of construction subsidy under sections 605(a) and 506, respectively, shall not apply to cruises or domestic services authorized under this section.

(e) **Application for approval of cruise; notice to other American flag operators.** Upon the application of any operator for approval of a specific cruise, the Secretary of Transportation, after notice to all other American flag operators who may be affected and after affording all such operators an opportunity to submit written data, views or arguments, with or without opportunity to present the same orally in any manner, and after consideration of all relevant matter presented, shall approve the proposed cruise, if he determines that the proposed cruise will not substantially adversely affect an existing operator's service performed with passenger vessels of United States registry. Such approval shall not be given more than two years in advance of the beginning of the cruise.

OFF-SEASON CRUISES ADDITIONAL TO RIGHT OF OPERATOR TO MAKE VOYAGES ON REGULAR SERVICE, ROUTE, OR LINE, INCLUDING APPROVED DEVIATIONS (46 App.

U.S.C. 1183a (1999)).¹⁸ The cruises authorized by section 613 shall be in addition to and not in derogation of the right of an operator to make voyages on his regular service, route or line, including approved deviations within the general area of his essential service. There shall be no adjustment of subsidy in the event of such deviations if they are without prejudice to the adequacy of service.

SEC. 614. SUSPENSION OF OPERATING DIFFERENTIAL SUBSIDY CONTRACTS BY OPERATOR RECIPIENTS (46 App. U.S.C. 1184 (1999)).

(a) Any operator receiving operating differential subsidy funds may elect, for all or a portion of its ships, to suspend its operating differential subsidy contract with all attendant statutory and contractual restrictions, except as to those pertaining to the domestic intercoastal or coastwise service, including any agreement providing for the replacement of vessels, if—

- (1) the vessel is less than ten years of age;
- (2) the suspension period is not less than twelve months;

¹⁸ Enacted as section 7 of Public Law 87-45, approved May 27, 1961 (75 STAT. 91), and not as part of the Merchant Marine Act, 1936.

(3) the operator's financial condition is maintained at a level acceptable to the Secretary of Commerce; and

(4) the owner agrees to pay to the Secretary, upon such terms and conditions as he may prescribe, an amount which bears the same proportion to the construction differential subsidy paid by the Secretary as the portion of the suspension period during which the vessel is operated in any preference trade from which a subsidized vessel would otherwise be excluded by law or contract bears to the entire economic life of the vessel.

(b) Any operator making an election under this section is entitled to full reinstatement of the suspended contract on request. The Secretary of Commerce may prescribe rules and regulations consistent with the purpose of this section.

SEC. 615.¹⁹ CONSTRUCTION, RECONSTRUCTION, OR ACQUISITION OF VESSELS OVER FIVE THOUSAND DEADWEIGHT TONS IN FOREIGN SHIPYARDS; PRECONDITIONS (46 App. U.S.C. 1185 (1999)).

(a) The Secretary of Commerce may, until September 30, 1983, authorize an operator receiving or applying for operating differential subsidy under this title to construct, reconstruct, or acquire its vessels of over five thousand deadweight tons in a foreign shipyard if the Secretary finds and certifies in writing that such operator's application for construction differential subsidy cannot be approved due to the unavailability of funds in the construction differential subsidy account. Vessels constructed, reconstructed, or modified pursuant to this section shall be deemed to have been United States build for the purposes of this title, section 901(b) of this Act, and section 5(7) of the Port and Tanker Safety Act of 1978 (46 U.S.C. 391(a)(7)): Provided, That the provisions of section 607 of this Act shall not apply to vessels constructed, reconstructed, modified, or acquired pursuant to this section.

(b) The provisions of this section shall be effective for fiscal year 1983 only if the President in his annual budget message for that year requests at least \$100,000,000 in construction differential subsidy or proposes an alternate program that would create equivalent merchant shipbuilding activity in privately owned United States shipyards and the Secretary reports to Congress on the effect such action will have on the shipyard mobilization base at least thirty days prior to making the certification referred to in subsection (a).

¹⁹ See also section 134 of Public Law 98-151, approved November 14, 1983 (97 STAT. 981), providing certain foreign construction authority.

SEC. 616.²⁰ WIND-UP OF SUBTITLE A PROGRAM (46 App. U.S.C. 1185a (1999)).

(a) After the date of enactment of the Maritime Security Act of 1996, the Secretary of Transportation shall not enter into any new contract for operating-differential subsidy under this subtitle.

(b) Notwithstanding any other provision of this Act, any operating-differential subsidy contract in effect under this title on the day before the date of enactment of the Maritime Security Act of 1996 shall continue in effect and terminate as set forth in the contract, unless voluntarily terminated at an earlier date by the parties (other than the United States Government) to the contract.

(c) The essential service requirements of section 601(a) and 603(b), and the provisions of sections 605(c) and 809(a), shall not apply to the operating-differential subsidy program under this subtitle effective upon the earlier of—

(1) the date that a payment is made, under the Maritime Security Program established by subtitle B to a contractor under that subtitle who is not party to an operating-differential subsidy contract under this subtitle, with the Secretary to cause notice of the date of such payment to be published in the Federal Register as soon as possible; or

(2) with respect to a particular contractor under the operating-differential subsidy program, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by subtitle B.

(d)(1) Notwithstanding any other provision of law, a vessel may be transferred and registered under an effective United States-controlled foreign flag if—

(A) the operator of the vessel receives an operating-differential subsidy pursuant to a contract under this subtitle which is in force on October 1, 1994, and the Secretary approves the replacement of such vessel with a comparable vessel, or

(B) the vessel is covered by an operating agreement under subtitle B, and the Secretary approves the replacement of such vessel with a comparable vessel for inclusion in the Maritime Security Fleet established under subtitle B.

(2) Any such vessel may be requisitioned by the Secretary of Transportation pursuant to section 902.

²⁰ Section 616 was added by Section 3(b) of Public Law 104-239, approved October 8, 1996, the Maritime Security Act of 1996.